

most that W charges a FAP-eligible individual is 50% of gross charges. W properly implements its FAP and charges no FAP-eligible individual more for emergency or other medically necessary care than 50% of gross charges in Year 1. W has met the requirements of paragraphs (a)(1) and (b) of this section in Year 1.

Example 5. A, an individual, receives medically necessary care from hospital facility V for which the AGB is \$3y. A is insured by U, a health insurer. Under U's contracts with V and A, the amount allowed for the care V provided to A is \$5y. Of that amount allowed, A is personally responsible for paying \$1y (in co-payments and deductibles) while U is responsible for paying \$4y. Based on the eligibility criteria specified in its FAP, V determines that A is FAP-eligible. Pursuant to paragraph (b)(2) of this section, V may charge U and A collectively \$5y while still meeting the requirements of paragraph (a)(1) of this section because the amount A is personally responsible for paying in co-payments and deductibles (\$1y) is less than the AGB for the care (\$3y).

Example 6. Assume the same facts as *Example 5*, except that under U's contracts with V and A, A is personally responsible for paying \$4y (in co-payments and deductibles) for the care while U is responsible for paying V \$1y. Because A is FAP-eligible under V's FAP, paragraph (a)(1) of this section requires that A not be personally responsible for paying V more than \$3y (the AGB for the care provided).

(c) *Gross charges.* A hospital facility must charge a FAP-eligible individual less than the gross charges for any medical care covered under the hospital facility's FAP. A billing statement issued by a hospital facility to a FAP-eligible individual for medical care covered under the FAP may state the gross charges for such care and apply contractual allowances, discounts, or deductions to the gross charges, provided that the actual amount the individual is personally responsible for paying is less than the gross charges for such care.

(d) *Safe harbor for certain charges in excess of AGB.* A hospital facility will be deemed to meet the requirements of paragraph (a) of this section, even if it charges more than AGB for emergency or other medically necessary care (or gross charges for any medical care covered under the FAP) provided to a FAP-eligible individual, if—

(1) The charge in excess of AGB was not made or requested as a pre-condition of providing medically necessary

care to the FAP-eligible individual (for example, an upfront payment that a hospital facility requires before providing medically necessary care);

(2) As of the time of the charge, the FAP-eligible individual has not submitted a complete FAP application to the hospital facility to obtain financial assistance for the care or has not otherwise been determined by the hospital facility to be FAP-eligible for the care; and

(3) If the individual subsequently submits a complete FAP application and is determined to be FAP-eligible for the care, the hospital facility refunds any amount the individual has paid for the care (whether to the hospital facility or any other party to whom the hospital facility has referred or sold the individual's debt for the care) that exceeds the amount he or she is determined to be personally responsible for paying as a FAP-eligible individual, unless such excess amount is less than \$5 (or such other amount set by notice or other guidance published in the Internal Revenue Bulletin).

(e) *Medically necessary care.* For purposes of meeting the requirements of this section, a hospital facility may (but is not required to) use a definition of medically necessary care applicable under the laws of the state in which it is licensed, including the Medicaid definition, or a definition that refers to the generally accepted standards of medicine in the community or to an examining physician's determination.

[T.D. 9708, 79 FR 78998, Dec. 31, 2014]

§ 1.501(r)-6 Billing and collection.

(a) *In general.* A hospital organization meets the requirements of section 501(r)(6) with respect to a hospital facility it operates only if the hospital facility does not engage in extraordinary collection actions (ECAs), as defined in paragraph (b) of this section, against an individual to obtain payment for care before the hospital facility has made reasonable efforts to determine whether the individual is eligible for assistance for the care under its financial assistance policy (FAP), as described in paragraph (c) of this section. For purposes of this section, with

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respect to any debt owed by an individual for care provided by a hospital facility—

(1) ECAs against the individual include ECAs to obtain payment for the care against any other individual who has accepted or is required to accept responsibility for the individual's hospital bill for the care; and

(2) The hospital facility will be deemed to have engaged in an ECA against the individual to obtain payment for the care, or to have taken one or more of the steps necessary to have made reasonable efforts to determine whether the individual is FAP-eligible for the care, if any purchaser of the individual's debt, any debt collection agency or other party to which the hospital facility has referred the individual's debt, or any substantially-related entity (as defined in § 1.501(r)-1(b)(28)) has engaged in such an ECA or taken such steps (whichever is applicable).

(b) *Extraordinary collection actions*—(1) *In general.* Except as otherwise provided in this paragraph (b), the following actions taken by a hospital facility against an individual related to obtaining payment of a bill for care covered under the hospital facility's FAP are ECAs:

(i) Selling an individual's debt to another party (other than debt sales described in paragraph (b)(2) of this section).

(ii) Reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.

(iii) Deferring or denying, or requiring a payment before providing, medically necessary care because of an individual's nonpayment of one or more bills for previously provided care covered under the hospital facility's FAP (which is considered an ECA to obtain payment for the previously provided care, not the care being potentially deferred or denied). If a hospital facility requires a payment before providing medically necessary care to an individual with one or more outstanding bills for previously provided care, such a requirement for payment will be presumed to be because of the individual's nonpayment of such bill(s) unless the hospital facility can demonstrate that it required the payment from the indi-

vidual based on factors other than, and without regard to, the individual's nonpayment of past bills.

(iv) Actions that require a legal or judicial process, including but not limited to—

(A) Placing a lien on an individual's property (other than a lien described in paragraph (b)(3) of this section);

(B) Foreclosing on an individual's real property;

(C) Attaching or seizing an individual's bank account or any other personal property;

(D) Commencing a civil action against an individual;

(E) Causing an individual's arrest;

(F) Causing an individual to be subject to a writ of body attachment; and

(G) Garnishing an individual's wages.

(2) *Certain debt sales that are not ECAs.* A hospital facility's sale of an individual's debt for care provided by the hospital facility will not be considered an ECA if, prior to the sale, the hospital facility has entered into a legally binding written agreement with the purchaser of the debt pursuant to which—

(i) The purchaser is prohibited from engaging in any ECAs to obtain payment for the care;

(ii) The purchaser is prohibited from charging interest on the debt in excess of the rate in effect under section 6621(a)(2) at the time the debt is sold (or such other interest rate set by notice or other guidance published in the Internal Revenue Bulletin);

(iii) The debt is returnable to or recallable by the hospital facility upon a determination by the hospital facility or the purchaser that the individual is FAP-eligible; and

(iv) If the individual is determined to be FAP-eligible and the debt is not returned to or recalled by the hospital facility, the purchaser is required to adhere to procedures specified in the agreement that ensure that the individual does not pay, and has no obligation to pay, the purchaser and the hospital facility together more than he or she is personally responsible for paying as a FAP-eligible individual.

(3) *Liens on certain judgments, settlements, or compromises.* Any lien that a hospital facility is entitled to assert under state law on the proceeds of a judgment, settlement, or compromise

owed to an individual (or his or her representative) as a result of personal injuries for which the hospital facility provided care is not an ECA.

(4) *Bankruptcy claims.* The filing of a claim in any bankruptcy proceeding is not an ECA.

(c) *Reasonable efforts*—(1) *In general.* A hospital facility will have made reasonable efforts to determine whether an individual is FAP-eligible for care only if the hospital facility meets the requirements described in paragraph (c)(2) or (c)(3) of this section.

(2) *Presumptive FAP-eligibility determinations based on third-party information or prior FAP-eligibility determinations*—(i) *In general.* With respect to any care provided by a hospital facility to an individual, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care if it determines that the individual is FAP-eligible for the care based on information other than that provided by the individual or based on a prior FAP-eligibility determination and, if the individual is presumptively determined to be eligible for less than the most generous assistance available under the FAP, the hospital facility—

(A) Notifies the individual regarding the basis for the presumptive FAP-eligibility determination and the way to apply for more generous assistance available under the FAP;

(B) Gives the individual a reasonable period of time to apply for more generous assistance before initiating ECAs to obtain the discounted amount owed for the care; and

(C) If the individual submits a complete FAP application seeking more generous assistance during the application period (as defined in § 1.501(r)-1(b)(3)), determines whether the individual is eligible for a more generous discount and otherwise meets the requirements described in paragraph (c)(6) of this section with respect to that complete FAP application.

(ii) *Examples.* The following examples illustrate this paragraph (c)(2):

Example 1. V is a hospital facility with a FAP under which the specific assistance for which an individual is eligible depends exclusively upon that individual's household income. The most generous assistance offered

for care under V's FAP is free care. V's FAP states that V uses enrollment in certain specified means-tested public programs to presumptively determine that individuals are FAP-eligible. D, an individual, receives care from V. Although D does not submit a FAP application to V, V learns that D is eligible for certain benefits under a state program that bases eligibility on household income. Based on this knowledge, V presumptively determines that D is eligible to receive free care under its FAP. V notifies D that it has determined he is eligible for free care based on his eligibility for the benefits under the state program and therefore does not owe V anything for the care he received. V has made reasonable efforts to determine whether D is FAP-eligible under this paragraph (c)(2).

Example 2. X is a hospital facility with a FAP that describes the data, including both hospital and publicly-available data, X uses to make presumptive FAP-eligibility determinations. On January 16, F, an individual, receives care from X. Using the hospital and publicly-available data described in its FAP, X presumptively determines that F is eligible for a 50% discount under its FAP, a discount that is not the most generous discount available under the FAP. The first billing statement that X sends to F indicates that F has been given a 50% discount under X's FAP, explains the basis for this presumptive FAP-eligibility determination, and informs F that she may apply for financial assistance if she believes she is eligible for a more generous discount. The billing statement indicates that F may call 1-800-888-xxxx or visit X's Web site at www.hospitalX.org/FAP to learn more about the FAP or the FAP application process. X sends F three more billing statements, each of which contains the standard written notice about the FAP that X includes on all of its billing statements in accordance with § 1.501(r)-4(b)(5), but F neither pays the amount she is personally responsible for paying nor applies for more generous financial assistance. The time between the first and fourth billing statement constitutes a reasonable period of time for F to apply for more generous assistance. V has made reasonable efforts to determine whether D is FAP-eligible under this paragraph (c)(2).

(3) *Reasonable efforts based on notification and processing of applications.* With respect to any care provided by a hospital facility to an individual, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care if it—

(i) Notifies the individual about the FAP as described in paragraph (c)(4) of this section before initiating any ECAs

to obtain payment for the care and refrains from initiating such ECAs (with the exception of an ECA described in paragraph (b)(1)(iii) of this section) for at least 120 days from the date the hospital facility provides the first post-discharge billing statement for the care;

(ii) In the case of an individual who submits an incomplete FAP application during the application period, notifies the individual about how to complete the FAP application and gives the individual a reasonable opportunity to do so as described in paragraph (c)(5) of this section; and

(iii) In the case of an individual who submits a complete FAP application during the application period, determines whether the individual is FAP-eligible for the care and otherwise meets the requirements described in paragraph (c)(6) of this section.

(4) *Notification*—(i) *In general.* With respect to any care provided by a hospital facility to an individual and except as provided in paragraph (c)(4)(iii) of this section, a hospital facility will have notified an individual about its FAP for purposes of paragraph (c)(3)(i) of this section only if the hospital facility does the following at least 30 days before first initiating one or more ECA(s) to obtain payment for the care:

(A) Provides the individual with a written notice that indicates financial assistance is available for eligible individuals, that identifies the ECA(s) that the hospital facility (or other authorized party) intends to initiate to obtain payment for the care, and that states a deadline after which such ECA(s) may be initiated that is no earlier than 30 days after the date that the written notice is provided.

(B) Provides the individual with a plain language summary of the FAP (as defined in § 1.501(r)-1(b)(24)) with the written notice described in paragraph (c)(4)(i)(A) of this section (or, if applicable, paragraph (c)(4)(iii) of this section).

(C) Makes a reasonable effort to orally notify the individual about the hospital facility's FAP and about how the individual may obtain assistance with the FAP application process.

(ii) *Notification in the event of multiple episodes of care.* A hospital facility may

satisfy the notification requirements described in paragraph (c)(4)(i) of this section simultaneously for multiple episodes of care and notify the individual about the ECA(s) the hospital facility intends to initiate to obtain payment for multiple outstanding bills for care. However, if a hospital facility aggregates an individual's outstanding bills for multiple episodes of care before initiating one or more ECAs to obtain payment for those bills, it will have not have made reasonable efforts to determine whether the individual is FAP-eligible under paragraph (c)(3) of this section unless it refrains from initiating the ECA(s) until 120 days after it provided the first post-discharge billing statement for the most recent episode of care included in the aggregation.

(iii) *Notification before deferring or denying care due to nonpayment for prior care.* In the case of an ECA described in paragraph (b)(1)(iii) of this section, a hospital facility may notify the individual about its FAP less than 30 days before initiating the ECA, provided that the hospital facility does the following:

(A) Otherwise meets the requirements of paragraph (c)(4)(i) of this section but, instead of the notice described in paragraph (c)(4)(i)(A) of this section, provides the individual with a FAP application form and a written notice indicating that financial assistance is available for eligible individuals and stating the deadline, if any, after which the hospital facility will no longer accept and process a FAP application submitted (or, if applicable, completed) by the individual for the previously provided care at issue. This deadline must be no earlier than the later of 30 days after the date that the written notice is provided or 240 days after the date that the first post-discharge billing statement for the previously provided care was provided.

(B) If the individual submits a FAP application for the previously provided care on or before the deadline described in paragraph (c)(4)(iii)(A) of this section (or at any time, if the hospital facility didn't provide any such deadline to the individual), processes the FAP application on an expedited basis.

(iv) *Examples.* The following example illustrates this paragraph (c)(4):

Example 1. A, an individual, receives care from T, a hospital facility, in February. T provides A with the first post-discharge billing statement for that care on March 3. This and subsequent billing statements that T sends to A contain the standard written notice about the FAP that X includes on all of its billing statements in accordance with § 1.501(r)-4(b)(5). A has not paid her bill or submitted a FAP application when T provides her with the third billing statement for the care, postmarked June 1. With this third billing statement, T includes a plain language summary of the FAP and a letter informing A that if she does not pay the amount owed or submit a FAP application by July 1, T intends to report A's delinquency to credit reporting agencies. T also calls A and informs her about the financial assistance available to eligible patients under T's FAP and about how to obtain assistance with the FAP application process. A does not pay her bill or submit a FAP application by July 1. T has made reasonable efforts to determine whether A is FAP-eligible, and thus may report A's delinquency to credit reporting agencies, as of July 2.

Example 2. G, an individual, receives care from Y, a hospital facility, on May 25 of Year 1. Y also makes numerous attempts to encourage G to apply for financial assistance, including by calling G to inform her about the financial assistance available to eligible patients under Y's FAP and to offer assistance with the FAP application process. By June 24 of Year 2, Y, which had not previously initiated any ECAs against G to obtain payment for the care, notifies G in writing that if G does not pay or complete a FAP application by July 24 of Year 2, Y intends to file a lawsuit seeking a judgment for the amount G owes for the care and to seek court permission to enforce the judgment by either seizing G's bank account or garnishing G's wages. The written notice also includes a plain language summary of the FAP. G fails to pay or submit a FAP application by July 24 of Year 2. Y has made reasonable efforts to determine whether G is FAP-eligible, and may seek a judgment for the amount G owes and court permission to enforce the judgment by seizing G's bank account or garnishing G's wages, as of July 25 of Year 2.

(5) *Incomplete FAP applications—(i) In general.* With respect to any care provided by a hospital facility to an individual, if an individual submits an incomplete FAP application during the application period, the hospital facility will have notified the individual about how to complete the FAP application

and given the individual a reasonable opportunity to do so for purposes of paragraph (c)(3)(ii) of this section only if the hospital facility—

(A) Suspends any ECAs to obtain payment for the care as described in paragraph (c)(8) of this section; and

(B) Provides the individual with a written notice that describes the additional information and/or documentation required under the FAP or FAP application form that must be submitted to complete the FAP application and that includes the contact information described in § 1.501(r)-1(b)(24)(v).

(ii) *FAP application completed.* If an individual who has submitted an incomplete FAP application during the application period subsequently completes the FAP application during the application period (or, if later, within a reasonable timeframe given to respond to requests for additional information and/or documentation), the individual will be considered to have submitted a complete FAP application during the application period, and the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible only if it meets the requirements for complete FAP applications described in paragraph (c)(6) of this section.

(iii) *Examples.* The following examples illustrate this paragraph (c)(5):

Example 1. (i) Assume the same facts as *Example 1* in paragraph (c)(4)(iv) of this section and the following additional facts: A submits an incomplete FAP application to T on July 15, which is before the last day of the application period on October 29 but after T has already initiated ECAs. Eligibility for assistance under T's FAP is based solely on an individual's family income and the instructions to T's FAP application form require applicants to attach to their application forms certain documentation verifying family income. The FAP application form that A submits to T on July 15 includes all of the required income information, but A fails to attach the required documentation verifying her family income. On July 22, a member of T's staff calls A to inform her that she failed to attach any of the required documentation of her family income and explains what kind of documentation A needs to submit and how she can submit it. T indicates that the documentation should be provided by September 22. T also sends A a letter that describes the missing documentation that A must submit by September 22 (and how to submit it) and

provides a telephone number A can call and room number she can visit to get assistance with the FAP application process. T does not initiate any new ECAs against A and does not take any further action on the ECAs T previously initiated against A between July 15 and September 22. A does not respond to T's letter and does not submit any missing documentation by September 22. T has made reasonable efforts to determine whether A is FAP-eligible, and may initiate or resume ECAs against A, as of September 23.

(ii) On October 10, before the last day of the application period on October 29, A provides T with the missing documentation. Because A has submitted a complete FAP application during the application period, to meet the requirements of paragraph (a) of this section, T must process the FAP application documentation to determine whether A is FAP-eligible and otherwise meet the requirements for complete FAP applications described in paragraph (c)(6) of this section.

Example 2. (i) B, an individual, receives care from U, a hospital facility, on January 10. U has established a FAP that provides assistance to all individuals whose household income is less than \$y, and the instructions to U's FAP application form specify the documentation that applicants must provide to verify their household income. Shortly after receiving care, B submits a FAP application form to U indicating that he has household income of less than \$y. B's FAP application form includes all of the required income information, but B fails to attach the required documentation verifying household income.

(ii) On February 9, U sends B the first post-discharge billing statement for the care that contains the standard written notice about the FAP that U includes on all of its billing statements in accordance with § 1.501(r)-4(b)(5). With this first post-discharge billing statement, U includes a letter informing B that the income information he provided on his FAP application form indicates that he may be eligible to pay only x% of the amount stated on the billing statement if he can provide documentation that verifies his household income. In addition, this letter describes the type of documentation (which is also described in the instructions to U's FAP application form) that B needs to provide to complete his FAP application and provides a telephone number that B may call and room number he may visit if he has questions or needs assistance with the FAP application process. By the time U is getting ready to send B a third billing statement for the care, B has not provided any response to U's request for the missing documentation. Accordingly, with the third billing statement postmarked May 10, U includes a plain language summary of the FAP plus a written notice informing B that U intends to report B's delinquency to credit reporting agencies if B does not submit the missing documenta-

tion or pay the amount due by June 9. U also calls B to inform B about the impending ECA and to see if he has questions about the missing documentation that U has requested. B does not provide any response to U's request for the missing documentation by June 9. U has made reasonable efforts to determine whether B is FAP-eligible, and thus may report B's delinquency to credit reporting agencies, as of June 10.

(6) *Complete FAP applications*—(i) *In general.* With respect to any care provided by a hospital facility to an individual, if an individual submits a complete FAP application during the application period, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care only if the hospital facility does the following in a timely manner:

(A) Suspends any ECAs to obtain payment for the care as described in paragraph (c)(8) of this section.

(B) Makes a determination as to whether the individual is FAP-eligible for the care and notifies the individual in writing of this eligibility determination (including, if applicable, the assistance for which the individual is eligible) and the basis for this determination.

(C) If the hospital facility determines the individual is FAP-eligible for the care, does the following:

(1) If the individual is determined to be eligible for assistance other than free care, provides the individual with a billing statement that indicates the amount the individual owes for the care as a FAP-eligible individual and how that amount was determined and that states, or describes how the individual can get information regarding, the AGB for the care.

(2) Refunds to the individual any amount he or she has paid for the care (whether to the hospital facility or any other party to whom the hospital facility has referred or sold the individual's debt for the care) that exceeds the amount he or she is determined to be personally responsible for paying as a FAP-eligible individual, unless such excess amount is less than \$5 (or such other amount set by notice or other guidance published in the Internal Revenue Bulletin).

(3) Takes all reasonably available measures to reverse any ECA (with the

exception of a sale of debt and an ECA described in paragraph (b)(1)(iii) of this section) taken against the individual to obtain payment for the care. Such reasonably available measures generally include, but are not limited to, measures to vacate any judgment against the individual, lift any levy or lien (other than a lien described in paragraph (b)(3) of this section) on the individual's property, and remove from the individual's credit report any adverse information that was reported to a consumer reporting agency or credit bureau.

(ii) *Anti-abuse rule for complete FAP applications.* A hospital facility will not have made reasonable efforts to determine whether an individual is FAP-eligible if the hospital facility bases its determination that the individual is not FAP-eligible on information that the hospital facility has reason to believe is unreliable or incorrect or on information obtained from the individual under duress or through the use of coercive practices. For purposes of this paragraph (c)(6)(ii), a coercive practice includes delaying or denying emergency medical care to an individual until the individual has provided information requested to determine whether the individual is FAP-eligible for the care being delayed or denied.

(iii) *Determination based on complete FAP applications sufficient for reasonable efforts.* A hospital facility will have made reasonable efforts to determine whether an individual is FAP-eligible with respect to any ECAs it initiates to obtain payment for care if, before initiating any such ECAs, it determines whether the individual is FAP-eligible for the care based on a complete FAP application and otherwise meets the requirements described in this paragraph (c)(6). If these conditions are satisfied, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care regardless of whether it has notified the individual as described in paragraph (c)(4) of this section or, if applicable, in paragraph (c)(5)(i)(B) of this section.

(iv) *Determining Medicaid eligibility.* A hospital facility will not fail to have made reasonable efforts to determine whether an individual is FAP-eligible

for care if, upon receiving a complete FAP application from an individual who the hospital facility believes may qualify for Medicaid, the hospital facility postpones determining whether the individual is FAP-eligible for the care until after the individual's Medicaid application has been completed and submitted and a determination as to the individual's Medicaid eligibility has been made.

(v) *Examples.* The following examples illustrate this paragraph (c)(6):

Example 1. C, an individual, receives care from W, a hospital facility, on September 1. W has established a FAP that provides assistance only to individuals whose family income is less than or equal to x% of the Federal Poverty Level (FPL), which, in the case of C's family size, is \$y. Upon discharge, W's staff gives C a plain language summary of the FAP and informs C that if she needs assistance filling out a FAP application form, W has a social worker on staff who can assist her. C expresses interest in getting assistance with a FAP application while she is still on site and is directed to K, one of W's social workers. K explains the eligibility criteria in W's FAP to C, and C realizes that to determine her family income as a percentage of FPL she needs to look at her prior year's tax returns. On September 20, after returning home and obtaining the necessary information, C submits a FAP application to W that contains all of the information and documentation required in the FAP application form instructions. W's staff promptly examines C's FAP application and, based on the information and documentation therein, determines that C's family income is well in excess of \$y. On October 1, W sends C her first post-discharge billing statement for the care she received on September 1. With the billing statement, W includes a letter informing C that she is not eligible for financial assistance because her FAP application indicates that she has family income in excess of x% of FPL (\$y for a family the size of C's family) and W only provides financial assistance to individuals with family income that is less than x% of FPL. W has made reasonable efforts to determine whether C is FAP-eligible as of October 1.

Example 2. E, an individual, receives care from P, a hospital facility, from February 24 to 28. E pays a co-payment of \$30 at discharge and is determined by her insurer to be personally responsible for paying another \$550 in deductibles. P sends E several billing statements starting on March 20 indicating that E owes \$550. By July 30, E has not paid the \$550 or submitted a FAP application. On July 30, P notifies E in writing that if E does not pay or complete a FAP application by

August 30, P intends to report B's delinquency to credit reporting agencies. The written notice also includes a plain language summary of the FAP. In addition, P calls E and informs her about the financial assistance available to eligible patients under P's FAP and about how to obtain assistance with the FAP application process. E fails to pay or submit a FAP application by August 30. P subsequently reports E's delinquency to credit reporting agencies. E then provides a complete FAP application to P on November 10, before the last day of the application period on November 15. P promptly examines the application and determines that E is eligible for free care under P's FAP. P contacts the credit reporting agencies to which it had reported E's delinquency and asks them to remove the adverse information from E's credit report. P also sends E a letter that informs her that she is eligible for free care under P's FAP and explains the basis for this eligibility determination and includes with this letter a check for \$30 (the co-payment E had paid). P has made reasonable efforts to determine whether E is FAP-eligible.

Example 3. R, a hospital facility, has established a FAP that provides financial assistance only to individuals whose family income is less than or equal to x% of the Federal Poverty Level (FPL), based on their prior year's federal tax return. L, an individual, receives care from R. While L is being discharged from R, she is approached by M, an employee of a debt collection company that has a contract with R to handle all of R's patient billing. M asks L for her family income information, telling L that this information is needed to determine whether L is eligible for financial assistance. L tells M that she does not know what her family income is and would need to consult her tax returns to determine it. M tells L that she can just provide a "rough estimate" of her family income. L states that her family income may be around \$y, an amount slightly above the amount that would allow her to qualify for financial assistance. M enters \$y on the income line of a FAP application form with L's name on it and marks L as not FAP-eligible. Based on M's information collection, R determines that L is not FAP-eligible and notifies L of this determination with her first billing statement. Because M had reason to believe that the income estimate provided by L was unreliable, R has violated the anti-abuse rule described in paragraph (c)(6)(ii) of this section. Thus, R has not made reasonable efforts to determine whether L is FAP-eligible.

(7) *When no FAP application is submitted.* Unless and until an individual submits a FAP application during the application period, any paragraphs of this section that are conditioned on an

individual's submitting a FAP application (namely, paragraphs (c)(2)(i)(C), (c)(3)(ii), and (c)(3)(iii) of this section) do not apply, and the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for care, and may initiate one or more ECAs to obtain payment for the care, once it has met the requirements of this section that are not contingent on an individual's submission of a FAP application. For example, unless and until a hospital facility receives a FAP application from an individual during the application period, the hospital facility has made reasonable efforts to determine whether the individual is FAP-eligible for care (and thus may initiate ECAs to obtain payment for the care) once it has notified the individual about the FAP as described in paragraph (c)(3)(i) of this section.

(8) *Suspending ECAs while a FAP application is pending.* With respect to any care provided by a hospital facility to an individual, if an individual submits a FAP application during the application period, the hospital facility (or other authorized party) will have suspended ECAs for purposes of this paragraph (c) only if, after receiving the application, the hospital facility (or other authorized party) does not initiate, or take further action on any previously-initiated, ECAs (with the exception of an ECA described in paragraph (b)(1)(iii) of this section) to obtain payment for the care until either—

(i) The hospital facility has determined whether the individual is FAP-eligible based on a complete FAP application and otherwise met the requirements of paragraph (c)(6) of this section; or

(ii) In the case of an incomplete FAP application, the individual has failed to respond to requests for additional information and/or documentation within a reasonable period of time given to respond to such requests.

(9) *Waiver does not constitute reasonable efforts.* For purposes of this paragraph (c), obtaining a signed waiver from an individual, such as a signed statement that the individual does not wish to apply for assistance under the

FAP or receive the information described in paragraphs (c)(4) or (c)(5) of this section, will not itself constitute a determination that the individual is not FAP-eligible and will not satisfy the requirement to make reasonable efforts to determine whether the individual is FAP-eligible before engaging in ECAs against the individual.

(10) *Agreements with other parties.* With the exception of sales described in paragraph (b)(2) of this section, if a hospital facility sells or refers an individual's debt related to care to another party, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care only if it first enters into (and, to the extent applicable, enforces) a legally binding written agreement with the party that is reasonably designed to ensure that no ECAs are taken to obtain payment for the care until reasonable efforts have been made to determine whether the individual is FAP-eligible for the care. At a minimum, such an agreement must provide the following:

(i) If the individual submits a FAP application after the referral or sale of the debt but before the end of the application period, the party will suspend ECAs to obtain payment for the care as described in paragraph (c)(8) of this section.

(ii) If the individual submits a FAP application after the referral or sale of the debt but before the end of the application period and is determined to be FAP-eligible for the care, the party will do the following in a timely manner:

(A) Adhere to procedures specified in the agreement that ensure that the individual does not pay, and has no obligation to pay, the party and the hospital facility together more than he or she is required to pay for the care as a FAP-eligible individual.

(B) If applicable and if the party (rather than the hospital facility) has the authority to do so, take all reasonably available measures to reverse any ECA (other than the sale of a debt or an ECA described in paragraph (b)(1)(iii) of this section) taken against the individual as described in paragraph (c)(6)(i)(C)(3) of this section.

(iii) If the party refers or sells the debt to yet another party during the application period, the party will obtain a written agreement from that other party including all of the elements described in this paragraph (c)(10).

(11) *Clear and conspicuous placement.* A hospital facility may print any written notice or communication described in this paragraph (c), including any plain language summary of the FAP, on a billing statement or along with other descriptive or explanatory matter, provided that the required information is conspicuously placed and of sufficient size to be clearly readable.

(12) *Providing documents electronically.* A hospital facility may provide any written notice or communication described in this paragraph (c) electronically (for example, by email) to any individual who indicates he or she prefers to receive the written notice or communication electronically.

[T.D. 9708, 79 FR 78998, Dec. 31, 2014; 80 FR 12762, Mar. 11, 2015]

§ 1.501(r)-7 Effective/applicability dates.

(a) *Effective/applicability date.* The rules of §§ 1.501(r)-1 through 1.501(r)-6 apply to taxable years beginning after December 29, 2015.

(b) *Reasonable interpretation for taxable years beginning on or before December 29, 2015.* For taxable years beginning on or before December 29, 2015, a hospital facility may rely on a reasonable, good faith interpretation of section 501(r). A hospital facility will be deemed to have operated in accordance with a reasonable, good faith interpretation of section 501(r) if it has complied with the provisions of the proposed or final regulations under section 501(r) (REG-130266-11 and/or REG-106499-12). Accordingly, a hospital facility may rely on § 1.501(r)-3 of the proposed or final regulations, or another reasonable interpretation of section 501(r)(3), for any CHNA conducted or implementation strategy adopted before the first day of the hospital organization's first taxable year beginning after December 29, 2015.

[T.D. 9708, 79 FR 78998, Dec. 31, 2014]